

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION NO.

CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS
FOR DISCHARGES RELATED TO TIMBER HARVEST ACTIVITIES

WHEREAS, the California Regional Water Quality Control Board, Central Valley Region, (hereinafter Regional Board) finds that:

1. California Water Code (CWC) Section 13260(a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than into a community sewer system, shall file with the appropriate regional board a report of waste discharge containing such information and data as may be required by the Regional Board, unless the Regional Board waives such requirement;

2. The Regional Board has a statutory obligation to prescribe waste discharge requirements except where the Regional Board waives waste discharge requirements pursuant to CWC Section 13269;

3. CWC Section 13269(a) provides that the Regional Board may waive the requirements to submit a report of waste discharge and to obtain waste discharge requirements as to a specific discharge or specific type of discharge, if the Regional Board determines that the waiver is consistent with any applicable water quality control plan and such waiver is in the public interest. CWC Section 13269 further provides that any such waiver of waste discharge requirements shall be conditional, may not exceed five years in duration, and may be terminated at any time by the Regional Board;

4. CWC Section 13269 was amended effective 1 January 2005. Section 13269 now includes the following provisions:

- The waiver shall include the performance of individual, group, or watershed-based monitoring, unless the Regional Board determines that the discharges do not pose a significant threat to water quality.
- Monitoring requirements shall be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions. In establishing monitoring requirements, the Regional Board may consider the volume, duration, frequency, and constituents of the discharge; the extent and type of existing monitoring activities, including, but not limited to, existing watershed-based, compliance, and effectiveness monitoring efforts; the size of the project area; and other relevant factors.
- Monitoring results must be made available to the public.

5. The Regional Board, on 30 January 2003 and in accordance with CWC Section 13269, adopted Resolution R5-2003-0005 which established a conditional waiver of waste discharge requirements for discharges related to timber harvest activities in the Central Valley Region as set forth in Attachment A (Waiver) of that Resolution.

6. Regional Board Resolution No. R5-2003-0005 provided that the Waiver shall expire on 30 January 2005 with the provision that the "Regional Board may review the Waiver at any time and may modify or terminate the Waiver in its entirety or for individuals, as is appropriate";

7. The Regional Board, on 28 January 2005 and after a public hearing where comments, testimony, and evidence was received and upon review of the record in this matter, adopted Resolution

R5-2005-0004 that extended the Waiver to 30 June 2005 as it found that such extension was in the public interest;

8. Resolution R5-2005-0004 also directed staff to schedule a public hearing for the April 2005 regular meeting of the Regional Board to consider renewing the Waiver to fully comply with CWC Section 13269:

9. CWC Section 13269 authorizes the Regional Board to include as a condition of a waiver the payment of an annual fee established by the State Water Resources Control Board (State Water Board). At the time of this hearing the State Water Board has not established annual fee regulations with respect to silvicultural operations.

10. The Regional Board has adopted the Water Quality Control Plan for the Sacramento and San Joaquin River Basins (4th Edition 1998) and the Water Quality Control Plan for the Tulare Lake Basin (2nd Edition 1995), hereinafter Basin Plan, that establishes beneficial uses, water quality objectives, waste discharge prohibitions, and implementation policies that apply to waters of the State and discharges to waters of the State within the Central Valley Region;

11. Pursuant to the Basin Plan and State Board Plans and Policies, including State Water Board Resolution No. 88-63, the existing and potential beneficial uses of waters in the Central Valley Region include:

- a. Agricultural Supply (AGR)
- b. Aquaculture (AQUA)
- c. Preservation of Biological Habitats of Special Significance (BIOL)
- d. Cold Freshwater Habitat (COLD)
- e. Commercial and Sportfishing (COMM)
- f. Estuarine Habitat (EST)
- g. Freshwater Replenishment (FRSH)
- h. Ground Water Recharge (GWR)
- i. Industrial Service Supply (IND)
- j. Migration of Aquatic Organisms (MIGR)
- k. Municipal and Domestic Supply (MUN)
- l. Navigation (NAV)
- m. Hydropower Generation (POW)
- n. Industrial Process Supply (PRO)
- o. Rare, Threatened, or Endangered Species (RARE)
- p. Water Contact Recreation (REC-1)
- q. Non-contact Water Recreation (REC-2)
- r. Shellfish Harvesting (SHELL)
- s. Spawning, Reproduction, and Development (SPWN)
- t. Warm Freshwater Habitat (WARM)
- u. Wildlife Habitat (WILD);

12. The Basin Plan contains water quality objectives developed to protect the above-listed beneficial uses of water. Eligibility criteria, Prohibitions, and Conditions contained in this Resolution

implement these water quality objectives. Compliance with water quality objectives will protect the beneficial uses listed in the above paragraph;

13. In 1981, the State Water Board: (a) certified a plan entitled “Water Quality Management for National Forest System Lands in California” that was developed and submitted by the United States Department of Agriculture, Forest Service (USFS); (b) designated the USFS as the Water Quality Management Agency (WQMA) for specified activities on National Forest System lands in California that may result in non-point source discharges, including timber management, vegetative manipulation, fuels management, road construction and watershed management; and (c) executed a Management Agency Agreement with the USFS for the purpose of implementing the certified plan and WQMA designation;

14. Pursuant to Section 208 of the federal Clean Water Act, the United States Environmental Protection Agency (USEPA) has approved the State Water Board’s certification of the USFS’s water quality management plan, and the State Water Board’s certification of the practices therein as “best management practices” (BMPs);

15. The Management Agency Agreement between the State Water Board and the USFS contemplates that the Regional Water Boards will waive issuance of waste discharge requirements for USFS timber harvest activities that may result in non-point source discharges, provided that the USFS designs and implements its projects to fully comply with State water quality standards;

16. The California Department of Forestry and Fire Protection (CDF) and the California Board of Forestry (BOF) regulate timber harvest activities on nonfederal lands in accordance with the Z’berg-Nejedly Forest Practice Act (Public Resources Code, Section 4511 et seq.) and the California Forest Practice Rules (Title 14, California Code of Regulations, Section 895 et seq.);

17. In 1988, the State Water Board: (a) conditionally certified the “Water Quality Management Plan for Timber Operations on Nonfederal Lands” which included those California Forest Practice Rules selected as BMPs and the process by which those rules are administered; (b) designated CDF and the BOF as joint WQMAs; and (c) executed a Management Agency Agreement with CDF and BOF for the purpose of implementing the certified plan and WQMA designations;

18. The Management Agency Agreement between the State Water Board and CDF/BOF required a formal review of the California Forest Practice Rules and administering processes no later than six years from the date of certification. To date, that review has not occurred;

19. The USEPA has not approved the State Water Board’s certification of the California Forest Practice Rules and administering processes for regulation of timber harvest activities on nonfederal lands in California;

20. On 6 July 1999, joint recommendations developed by staffs from four Regional Water Quality Control Boards (e.g., Lahontan, North Coast, Central Coast, Central Valley) were submitted to the BOF. Those recommendations detailed numerous amendments needed to the Forest Practice Rules in order to provide better protection for water quality and beneficial uses of water. To date, many of those recommendations have not been adopted by the BOF;

21. The Waiver addresses the joint recommendations by including conditions in addition to the requirements of the Forest Practice Rules to assure that timber harvest activities will be protective of waters of the state. These conditions include: The discharger must comply with all provisions of the Basin Plans, more stringent criteria for Category 1, Mandatory Equipment Limitation Zone for Class III

and IV watercourses, mandatory retention of shade trees, notification of pesticide applications, hiring of registered Civil Engineer when certain conditions exist, and must follow recommendations made by the Regional Board staff during Pre-Harvest Inspections;

22. State Water Board Resolution 68-16 ("Statement of Policy with Respect to Maintenance of High Quality Waters in California") requires the Regional Board to regulate discharges of waste to waters of the state to achieve highest water quality consistent with maximum benefit to the people of the State. It further requires that the discharge meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that pollution or nuisance will not occur and that the highest water quality consistent with maximum benefit to the people of the State will be maintained. This Waiver is consistent with Resolution 68-16 because it requires compliance with applicable water quality control plans, prohibits the creation of pollution or nuisance, and sets forth conditions that require dischargers to implement additional management practices (beyond those required in the Forest Practice Rules and USFS BMP guidance manuals) to assure protection of beneficial uses of waters of the state and maintain the highest water quality consistent with maximum benefit to the people of the State.

23. The Regional Board, acting as the lead agency for this project under the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) (CEQA), conducted an Initial Study in 2002 in accordance with Title 14, California Code of Regulations (CCR), Section 15063;

24. The Regional Board adopted a negative declaration pursuant to the California Environmental Quality Act (CEQA) (Public Resources Code 21000 et seq.) on 30 January 2003. This action to renew the waiver does not require preparation of a subsequent or supplemental environmental document pursuant to Title 14 California Code of Regulations (CCR) Sections 15162 or 15163. As described in the Staff Report, there is no evidence to indicate that substantial changes are proposed for the project, that substantial changes have occurred with respect to the circumstances of the project, or that there is new information of substantial importance with respect to the project, as described in Title 14 CCR Section 15162(a);

25. The Waiver (Attachment A) is in the public interest as described below:

- (a) Timber harvest activities are primarily regulated by other agencies, including CDF and the USFS. The Regional Board does not approve timber harvest, but it does have authority to require compliance with the California Water Code;
- (b) Without the Waiver, timber harvest activities would continue under authority of those other agencies, but such activities may not be subject to appropriate water quality protective conditions;
- (c) Without the Waiver, the Regional Board could regulate a smaller percentage of timber harvest activities in the Region due to limited staff resources, but with the Waiver, timber harvest activities acting pursuant to the Waiver are subject to enforceable conditions;
- (d) The Waiver contains conditions that require compliance with the applicable Regional Board Water Quality Control Plan, including applicable water quality objectives;
- (e) The Waiver contains conditions requiring compliance with monitoring and reporting programs that will assist in the protection of water quality and in verification of the adequacy and effectiveness of Waiver conditions;

- (f) Compliance with the conditions of the Waiver will result in protection of water quality;
- (g) The Waiver does not approve of or authorize pollution.
- (h) The Waiver conditions are subject to enforcement pursuant to CWC section 13350 in the same way as enforcement of waste discharge requirements;
- (i) The Waiver is an effective mechanism given staff resources to regulate a large number of potential discharges;
- (j) The Waiver allows staff to continue to participate in the pre-harvest review of proposed timber activities which provides staff the ability to require implementation of protective measures beyond those required by CDF and the USFS for the most critical timber operations.
- (k) The State Water Board, on 22 January 2004 and in Order No. WQO 2004-0002, affirmed the Regional Board Waiver and stated: "The Waiver includes specific criteria to ensure compliance with requirements of the Basin Plan and to prevent discharges that may substantially impact water quality. Further, the Regional Board's actions were consistent with State Board policies and procedures and the terms of the Waiver do not exceed the Regional Board's statutory authority."
- (l) The Waiver has been in effect for more than two years and based on staff's experience, the Waiver has result in increased use of management practices to protect waters of the state such as the inclusion of staff recommendations during field review of timber harvest plans and the inclusion of additional management practices in submittals not field-reviewed by staff;
- (m) The Waiver, given limited Regional Board staff resources, provides a framework that most effectively utilizes resources to regulate discharges of wastes.

26. The Waiver is consistent with applicable water quality control plans as it requires compliance with the Basin Plan, including applicable water quality objectives, prohibits the creation of pollution or nuisance, and includes eligibility criteria and conditions to protect waters of the State.

27. The Waiver requires compliance with monitoring conditions consistent with the amendments to CWC Section 13269.

28. As described in the staff report and the administrative record, the adoption of general or individual waste discharge requirements for all timber harvest activities in the Central Valley Region is not feasible at this time. The Regional Board receives for review more than 2000 timber harvest plans annually. Given the number of Regional Board staff and other factors, including the timing of the CDF timber harvest approval process and the time needed to adopt waste discharge requirements, it is not feasible for the Regional Board to adopt many individual waste discharge requirements in a year. General waste discharge requirements on, for example, a watershed-by-watershed approach, would also take a significant amount of time given the large number of watersheds and sub-watersheds in the Region. Thus, without the Waiver, most timber harvest activities would not be subject to any regulation under the California Water Code. Waste discharge requirements do not provide identifiable benefits over this Waiver because the Waiver contains essentially the same conditions that would be included in waste discharge requirements, such as the requirement to comply with water quality control plans, and the waiver is enforceable to the same extent as waste discharge requirements. The adoption of waste discharge requirements, however, is not precluded because pursuant to CWC Section 13269, a waiver may be terminated at any time without cause.

29. The Regional Board has given notice of the renewal of the Waiver by publication within the affected counties within the Central Valley Regional Board's jurisdiction;

30. The Regional Board conducted a public hearing on 28 April 2005 in Sacramento, California, and considered all testimony and evidence concerning this matter;

THEREFORE BE IT RESOLVED:

1. Based on the findings set forth in this Resolution and the administrative record for this matter, the Regional Board determines that the renewal of a waiver of waste discharge requirements for discharges related to timber harvest activities as set forth in the Attachments to this Resolution, which contain eligibility criteria, prohibitions, and conditions to assure consistency with applicable water quality control plans, and monitoring conditions, is in the public interest.

2. The Regional Board, based on findings set forth in this Resolution and the administrative record for this matter, including the information contained in the adopted Negative Declaration, determines that the renewal of the “Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities” as set forth in Attachment A (as revised) (Waiver) will not have a significant impact on the environment;

3. The Regional Board determines that the “General Monitoring Conditions” for dischargers seeking coverage under the Waiver as set forth in Attachment B and the “Implementation, Effectiveness and Forensic Monitoring and Reporting Program” set forth in Attachment C are consistent with CWC Section 13269(a)(2);

4. The Regional Board, in accordance with CEQA and the CEQA Guidelines, determines that the renewal of the Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities will not result in significant adverse environmental impacts, individually, or cumulatively because activities conducted in compliance with the Waiver will be protective of Waters of the State;

5. The Regional Board, based on the, determines that it is not necessary at this time to adopt individual or general waste discharge requirements for waste discharges related to timber harvest activities that meet the eligibility criteria specified in the Waiver and which are conducted in accordance with the conditions specified in the Waiver;

6. The Regional Board, based on the **findings set forth in this Resolution and the administrative record for this matter**, hereby adopts the “renewed” Waiver as set forth in Attachment A, the General Monitoring Conditions as set forth in Attachment B, the Implementation, Effectiveness and Forensic Monitoring and Reporting Program as set forth in Attachment C and the Requirements for Watershed Analysis as set forth in Attachment D;

7. The Regional Board finds it appropriate to include a condition that a person seeking coverage under the Waiver pay an annual fee during the time period that the person is subject to the waiver and that the fee will become payable upon establishment of an appropriate fee schedule by the State Water Board in accordance with CWC Section 13269:

8. The discharge of any waste not specifically regulated by the Waiver described herein is prohibited unless the discharger complies with CWC Section 13260(a) and the Regional Board either issues waste discharge requirements pursuant to CWC Section 13263 or an individual waiver pursuant to CWC Section 13269 or the time frames specified in CWC Section 13264(a) have elapsed;

9. This Waiver shall not create a vested right and all such discharges shall be considered a

privilege, as provided for in CWC Section 13263;

10. Pursuant to CWC Section 13269, this action waiving the issuance of waste discharge requirements for certain specific types of discharges: (a) is conditional, (b) may be terminated at any time, (c) does not permit an illegal activity, (d) does not preclude the need for permits which may be required by other local or governmental agencies, and (e) does not preclude the Regional Board from administering enforcement remedies (including civil liability) pursuant to the California Water Code;

11. The Executive Officer or Regional Board may terminate the applicability of the Waiver described herein to any timber harvest activities at any time;

12. In compliance with CWC Section 13269, the Executive Officer will continue to implement a program to evaluate compliance with the conditions pursuant to which waste discharge requirements are waived by this Resolution;

13. As part of the Waiver compliance effort, Regional Board staff will meet periodically with major stakeholders, including environmental groups, to address water quality related issues on a watershed basis;

14. A waiver of waste discharge requirements for a type of discharge may be superseded by the adoption by the State Water Board or Regional Board of specific waste discharge requirements or general waste discharge requirements for that type of discharge;

15. Pursuant to CWC Section 13269, the waiver of waste discharge requirements for the categories of waste specified herein shall not exceed five years in duration;

16. In compliance with California Water Code Section 13269, this Resolution and the Waiver described herein shall be reviewed and amended as necessary no later than five years from the date of adoption of this Resolution;

17. This renewed Waiver (Attachments A through D) shall become effective on 28 April 2005, and shall expire on 31 March 2010, unless terminated or renewed by the Regional Board. ;

18. As provided by CWC Section 13350(a), any person may be civilly liable if that person in violation of a waiver condition or waste discharge requirements, intentionally or negligently discharges waste, or causes waste to be deposited where it is discharged, into the waters of the State and creates a condition of pollution or nuisance;

19. The Regional Board may review the Waiver at any time and may modify or terminate the Waiver in its entirety or for individuals, as is appropriate.

I, THOMAS R. PINKOS, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Central Valley Region, on 28 April 2005.

THOMAS R. PINKOS
Executive Officer